

# 立法會

## *Legislative Council*

LC Paper No. LS40/11-12

### **Paper for the House Committee Meeting on 2 March 2012**

### **Legal Service Division Report on Trade Descriptions (Amendment) Bill 2012**

#### **I. SUMMARY**

- 1. Objects of the Bill** To amend the Trade Descriptions Ordinance (Cap. 362) to broaden the rules of origin for goods qualified for preferential tariff treatment under certain trade agreements.
  
- 2. Comments**

The Bill introduces new rules of origin for goods, to be based on a maximum percentage of the value of the goods attributable to a place other than Hong Kong or a state which is party to an agreement of trade liberalization (ATL) or a minimum percentage attributable to Hong Kong or a state which is party to the ATL.

These "value-based" rules will make it easier for Hong Kong exporters to claim tariff concessions from states which are parties to ATLS, as the present rules of origin are restricted to a "process-based" concept.

The Bill also provides that the relevant rules of origin may be any other rules specified under the relevant ATLS to cater for the situation where rules other than the "process-based" and the "value-based" may be applicable.
  
- 3. Public Consultation** According to the LegCo Brief, the Administration has consulted the major industry associations representing the producers and traders on the proposed legislative amendments. They supported the proposed legislative amendments.
  
- 4. Consultation with LegCo Panel** The Panel on Commerce and Industry was consulted on 19 July 2011. Members were supportive of the proposal to relax the rules of origin.
  
- 5. Conclusion** In view of the matters set out in paragraphs 9 and 10 of this report, Members may wish to consider whether forming a Bills Committee is necessary.

No other difficulties in the legal and drafting aspects have been identified.

## **II. REPORT**

### **Objects of the Bill**

To amend the Trade Descriptions Ordinance (Cap. 362) (TDO) to broaden the rules of origin for goods qualified for preferential tariff treatment under certain trade agreements and to make certain textual amendments.

### **LegCo Brief Reference**

2. Members may refer to the LegCo Brief issued by the Commerce and Economic Development Bureau dated 22 February 2012 (File Ref: CITB CR 14/18/2/4) for further information.

### **Date of First Reading**

3. 29 February 2012.

### **Comments**

#### Background

4. Hong Kong has entered into various arrangements or agreements of trade liberalization (ATLs) with various places so that Hong Kong goods may gain access to those places under more favourable conditions. In June 2011, Hong Kong has entered into ATLs with the European Free Trade Association (EFTA), including four bilateral agricultural agreements.

5. To be eligible for such favourable conditions, the goods need to have originated in Hong Kong. The origin of the goods is determined by the "rules of origin". At present, the rules of origin are set out in TDO, which are determined by the "process-based" rules. However, under the EFTA ATLs, there is an alternative set of rules of origin, known as the "value-based" rules.

#### The Bill

6. To cater for the EFTA ATLs, as well as future ATLs agreed between Hong Kong and other trading partner places<sup>1</sup>, clause 4 of the Bill proposes to

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<sup>1</sup> "Trading partner places" means a place, other than Hong Kong, to which a trade agreement specified in the new Schedule 1 introduced by the Bill is applicable.

introduce a new section 2A to TDO, which specifies, among other things, the rules of origin agreed under the ATLs. The relevant ATLs, the trading partner places, and the date of entry into force of the ATLs are specified in a new Schedule 1.

7. Apart from the process-based rules, the proposed section 2A introduces the new "value-based" rules. Under the Bill, the concept underlying the rules is expressed as rules based principally on –

- (a) a maximum percentage of the value of the goods attributable to places other than Hong Kong or a trading partner place;<sup>2</sup> or
- (b) a minimum percentage of the value of the goods attributable to Hong Kong or a trading partner place<sup>3</sup>.

8. To ascertain the details of the rules of origin, traders need to refer to the relevant ATLs. Hence, the Bill sets out in the new Schedule 1 the relevant EFTA ATLs including the four bilateral agricultural agreements. The new Schedule 1 also sets out the states concerned in respect of which the proposed rules, including the "value-based" rules, will apply. The states concerned are Iceland, Principality of Liechtenstein, Kingdom of Norway and Swiss Confederation.

9. It is specified in the new Schedule 1 that the relevant EFTA ATLs will enter into force on a date in accordance with a particular provision under the relevant ATLs. In answering enquiries by the Legal Service Division, the Administration explains that under the ATLs, certain procedural requirements have to be met before the ATLs enter into force. The Administration expects that the ATLs will enter into force on 1 June 2012 if notice of resumption of Second Reading debate of the Bill is given on 28 March 2012 and the Bill is passed. Schedule 1 may be amended to set out the actual date by notice published in the Gazette.

10. The proposed section 2A also provides that the rules of origin may be any other rules specified in the relevant ATLs. In answering enquiries by the Legal Service Division, the Administration explained that this provision is to cater for situations where rules other than "process-based" and "value-based" may be applicable and to provide for flexibility in swift implementation of new rules of origin. To address the concern that the public may not be aware of such "any other rules", the Administration agrees that in the resumption of

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<sup>2</sup> The proposed section 2A(2)(b)(i). According to paragraph 12 of the LegCo Brief, EFTA States adopt this approach.

<sup>3</sup> The proposed section 2A(2)(b)(ii). According to the LegCo Brief, this approach is adopted in some other ATLs.

Second Reading debate, the Secretary for Commerce and Economic Development will undertake to make public announcement when new rules of origin are introduced in the future, and to provide relevant guidelines to the industry. Schedule 1 will also be amended to incorporate new ATLS by notice published in the Gazette under the proposed section 2A(5), which is subject to negative vetting by the Legislative Council.

11. The Bill also provides that the Director-General of Trade and Industry is to make available all the relevant ATLS at his office for public inspection free of charge during normal office hours. According to the LegCo Brief, the Trade and Industry Department (TID) will issue trade circulars to provide traders with details of the relevant provisions as well as guidelines on how to satisfy the preferential tariff requirements. The relevant ATLS will also be made available on the website of TID.<sup>4</sup>

12. According to the LegCo Brief, the introduction of the "value-based" rules adds flexibility for Hong Kong traders to claim tariff concessions. The Administration has illustrated that woven garments bound for the four EFTA states will be able to enjoy preferential tariff treatment if 40% of the value (or more) of the final product is attributable to the processes done in Hong Kong, even though those garments may not satisfy the process-based rules.

### **Commencement**

13. The Bill will come into operation on the date of gazettal after enactment.

### **Public Consultation**

14. According to the LegCo Brief, the Administration has consulted the major industry associations representing producers and traders. They supported the proposed legislative amendments.

### **Consultation with LegCo Panel**

15. The Panel on Commerce and Industry was consulted on the proposed legislative amendments at its meeting on 19 July 2011. The

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<sup>4</sup> In relation to the ATL with EFTA, the agreement is available at the website of TID at [http://www.tid.gov.hk/english/trade\\_relations/hkefta/text\\_agreement.html](http://www.tid.gov.hk/english/trade_relations/hkefta/text_agreement.html).

Administration explained that the proposed amendments were to reflect the more flexible criteria in the relevant ATL. This would allow more room for goods exported from Hong Kong to enjoy preferential tariff treatment.

16. Panel members in general supported the proposed legislative amendments to cater for the "value-based" rules of origin. They also urged the Administration to continue to negotiate more ATLs with other trading partners of Hong Kong in the future, and to step up promotion to facilitate the industry's understanding of the "value-based" rules.

### **Conclusion**

17. In view of the matters set out in paragraphs 9 and 10 of this report, Members may wish to consider whether forming a Bills Committee is necessary.

18. No other difficulties have been identified in the legal and drafting aspects of the Bill.

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1 March 2012